SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA

MINUTE ORDER

DATE: 10/13/2016 TIME: 08:20:00 AM DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce
CLERK: Tiffany Froedge
REPORTER/ERM: Melina Homan

CASE NO: **56-2014-00461060-CU-NP-VTA**
CASE TITLE: **P.Q.L Inc vs Revolution Lighting Technologies Inc**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

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EVENT TYPE: Demurrer (CLM) 1)Demurrer to Plaintiff PQL Inc's third amended complaint
MOVING PARTY: Jordan Kotero, Dana A Warnes, Gene Leduff, Blake Delgado
CAUSAL DOCUMENT/DATE FILED: Demurrer 1)Demurrer to Plaintiff PQL Inc's third amended complaint, 08/30/2016

EVENT TYPE: Motion To Quash Service of Summons and dismiss Action
MOVING PARTY: James Depalma, Aston Capital LLC
CAUSAL DOCUMENT/DATE FILED: Motion to Quash Service of Summons and dismiss Action; Supporting Ps&As & Evidence, 08/24/2016

EVENT TYPE: Motion to Strike 2)Notice of motion to strike the second, sixth, and seventh causes of action from pltf PQL Inc's third amended complaint; 3)Memo of p&a's in supp of demurrer and motion to strike, and 4)Decl. of Griffen J. Thorne in supp thereof
MOVING PARTY: Jordan Kotero, Dana A Warnes, Gene Leduff, Blake Delgado
CAUSAL DOCUMENT/DATE FILED: Motion to Strike 2)Notice of motion to strike the second, sixth, and seventh causes of action from pltf PQL Inc's third amended complaint; 3)Memo of p&a's in supp of demurrer and motion to strike, and 4)Decl. of Griffen J. Thorne in supp thereof, 08/30/2016

APPEARANCES
Nicholas Kanter, specially appearing for counsel Sue M Bendavid, present for Defendant,Cross - Defendant(s).
Nicholas Kanter, counsel, present for Defendant,Cross - Defendant(s).
David Yoshida, counsel for Plaintiff, is present

At 09:02 a.m., court convenes in this matter with all parties present as previously indicated.

As to Demurrer and Motion to Strike:

Counsel have received and read the court's written tentative ruling.

Counsel Griffen Thorne for Defendants Dana Warnes, Blake Delgado, Gene LeDuff, and Jordan Kotero has contacted the court (previous to the hearing) and is submitting on the tentative ruling and will not appear

Plaintiff will submit on the Court's tentative ruling.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

The court's ruling is as follows:

Overrule the demurrer. Answer to be filed and served within 10 days. (CRC Rule 3.1320.)

Grant the motion to strike.

Discussion:

Demurrer
Defendants Dana A. Warnes, Gene LeDuff, Blake Delgado, and Jordan Kotero ("Individual Defendants" or "Defendants") demurrer to Plaintiff PQL's Third Amended Complaint ("TAC") as to the 9th cause of action. Defs contend that the 9th cause of action for tortuous interference with contract fails to state facts sufficient to sustain a cause of action. CCP 430.10(e).

Defendants' demurrer alleges that the 9th cause of action is deficient because it only states that they disrupted their own contracts with PQL as opposed to PQL's contracts with others. Individual Defendants assert that " . . . to survive this demurrer, PQL must have alleged facts showing that Individual Defendants interfered with valid contracts between PQL and third parties." (See Demurrer, page 3, lines 12-13.) What PQL alleges is that the Individual Defendants solicited each other to disrupt their employment contracts with PQL. (TAC, ¶54.) By breaching their own non-solicitation contract, each defendant disrupted the contracts of third parties. In other words, the act of solicitation by each defendant induced the disruption of contractual relationships between PQL and persons other than themselves.

The disruption of contracts between PQL and third parties is sufficiently alleged in that when Blake Delgado solicited Dana Warnes to leave PQL, he disrupted his own contractual relationship with PQL and induced the disruption of Ms. Warnes' contractual relationship with PQL. Ms. Warnes' contractual relationship was disrupted when she left PQL and PQL was damaged as a result. Defendants challenge to the credibility of these allegations is not cognizable on demurrer. In ruling on a demurrer, the court must not only assume the truth of the alleged facts, but also those facts that may be implied or inferred from those expressly alleged in the pleading. (See CCP § 452.) Further, a pleading need only allege the ultimate facts that constitute the cause of action, not the evidence by which the ultimate facts will be proved at the trial. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551, fn.5.)

Individual Defendants argue that some allegations in the 9th cause of action are preempted by the California Uniform Trade Secret Act ("CUTSA") because they concern trade secret misappropriation. CUTSA prohibits the misappropriation of trade secrets, but specifically preserves (1) "contractual remedies, whether or not based upon misappropriation of a trade secret," (2) "other civil remedies that are not based upon misappropriation of a trade secret," and (3) "criminal remedies, whether or not based upon misappropriation of a trade secret." (Civ. Code, § 3426.7, italics added.) The Act preempts another civil remedy only if that remedy "hinges upon," is "predicated upon," "rests squarely on," or is "based entirely on" allegations that a trade secret was misappropriated. (K.C. Multimedia, Inc. v. Bank of America Technology & Operations Inc. (2009) 171 Cal.App.4th 939, 955, 959, 962; Silvaco, at p. 234.) The Act "does not displace noncontract claims that, although related to a trade secret misappropriation, are independent and based on facts distinct from the facts that support the misappropriation claim." (Angelica Textile Services, Inc. v. Park (2013) 220 Cal.App.4th 495, 506; cf. K.C. Multimedia, at p. 955 [preemption reaches only claims '"based on the same nucleus of facts as the misappropriation of trade secrets claim . . ."'].) Notably, CUTSA does not preempt "contractual remedies, whether or not based upon misappropriation of a trade secret," or "other civil remedies that are not based upon

misappropriation of a trade secret . . . ." (Civ. Code, § 3426.7, subd. (b); K.C. Multimedia, supra, 171 Cal.App.4th at p. 958.) "[B]reach of contract claims, even when they are based on misappropriation or misuse of a trade secret, are not displaced by UTSA." (Angelica Textile Services, Inc. v. Park, 220 Cal. App. 4th 495, 508 (Cal. App. 4th Dist. 2013)

Motion to Strike**.**
Defendants move to strike the 2nd, 6th, and 7th causes of action, which are directed only to former defendant Gene Scott Fein ("Fein"), whom PQL has previously dismissed with prejudice from this action. On July 13, 2016, Defendant Gene Fein was dismissed from this action with prejudice. The Third Amended Complaint was filed after a motion for leave was granted on August 9, 2016, and adds defendants Aston Capital, LLC and James DePalma. It also still includes Gene Fein as a named defendant. Mr. Fein is no longer a party, and was dismissed by PQL with prejudice. Notwithstanding the dismissal, PQL still alleges that Mr. Fein is a defendant. (See TAC, ¶5.) Thus, the Court must strike the 2nd, 6th, and 7th cause of action, as well as paragraph 5 of the TAC.

Notice to be given by Mr. Yoshida.

As to Motion to Quash:

Defendants James Depalma and Aston Capital LLC submit on the Court's tentative ruling.

Matter submitted to the Court with argument.

The court examines Mr. Yoshida as to confidential email attached as an exhibit.

Matter submitted to the Court with argument.

The Court finds/orders:

Matter is taken under submission.

After further consideration of the submitted matter, the court rules as follows:

Grant Defendant Aston Capital and James DePalma's Motion to Quash Service of Summons and Dismiss Action without prejudice. Plaintiff PQL has not met its burden of proof by a preponderance of the evidence to demonstrate the defendants have sufficient contacts with the forum state to justify jurisdiction. (*Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 266.)

Revolution contends that in opposing the present motion, PQL committed a serious violation of this Court's order, by publicly filing an email marked as "CONFIDENTIAL" by Revolution's counsel. (The email is Ex. B to the Declaration of T. Randolph Cantonese, Esq.) Revolution contends that by filing this email, Pl violated Section 6 of this Court's Protective Order ("PO"). The Court orders the email removed from the public file and sealed. At the hearing, the Court will determine appropriate sanctions for Plaintiff/PQL's alleged violation of the court's protective order. After hearing argument, no sanctions are imposed for this isolated violation.

Gant the request for judicial notice as to Ex. A. As to Ex. B, C, and D, grant existence of the documents, but deny to the extent PQL asks the Court to take notice of the truth of the statements contained therein. The Court may not take judicial notice of the truth of the content of the documents. (See *North Beverly Park Homeowners Ass'n v. Bisno* (2007) 147 Cal.App.4th 762, 778.

Evidentiary objections to Deposition transcript of Gene Fein
Objection Numbers:
- Sustain
- Sustain
- Sustain
- Overrule (it asks what he believes and he responded accordingly)

- Sustain
- Sustain
- Sustain
- Sustain
- Sustain
- Sustain (?)
- ? [The page is cut off. The quotation may have been qualified in the following comments]
- Overrule.
- Overrule.
- Overrule.
- Overrule.
- Sustain
- Overrule
- Overrule
- Overrule
- Sustain

Evidentiary objections to declaration of T. Randolph Catanese.
Objection Number:
- Overrule
- Sustain
- Sustain
- Sustain
- Sustain
- Sustain

Discussion:

Pl appears to have abandoned any claim that general jurisdiction exists over Aston or DePalma. Plaintiff has no evidence to dispute that both Aston and DePalma: (1) are not domiciled in CA; (2) do not have offices in CA; (3) do not employ employees in CA; and (4) do not own property in California. (DePalma Declaration, ¶¶ 3, 4, & 6.) While Pl argues that DePalma's declaration is "directly controverted by facts and evidence contained in the Request for Judicial Notice and Declaration of T. Randolph Cantonese, Esq.," this statement lacks merit since none of the evidence cited by Plaintiff contradicts the facts stated in DePalma's declaration.

To satisfy the burden of showing specific jurisdiction, a plaintiff must prove the "controversy is related to or arises out of defendants' contacts with the forum." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 536.) PQL did not present admissible evidence to support a finding that they purposely availed themselves of the benefits of California, or directed activities toward CA, for the purposes of establishing jurisdiction. Aston and DePalma provide a laundry list of examples showing how Pl PQL's evidence is either irrelevant to establishing jurisdiction inadmissible, or both. (See 11 examples on page 3, line 7 through page 5, line 28 of the Reply of Aston and DePalma.)

Fein's testimony does not establish that Aston or DePalma had contacts with CA, or directed "unlawful acts" toward CA. The testimony shows that DePalma (as a member of the Revolution board) was present at Revolution board meetings in CT, and *heard* that Revolution employees were making sales to P'ls customers in CA. Finding a non-resident's mere knowledge that a party to the litigation may commit an unlawful act in California is insufficient to establish a specific personal jurisdiction over the non-resident. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 276.) "[I]t is well established by California case law that for jurisdictional purposes the acts of corporate officers and directors, in their official capacities, are acts exclusively of (*qua*) the corporation, and are thus not material for purposes of establishing minimum contacts as to individuals." (*Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 713.) Other examples pointed out in the Reply *(*page 6, line 14 through page 8, line 13) evidence that Pl has not met its burden*.* Plaintiff PQL has not met its burden of proof by a preponderance of the evidence to demonstrate the defendant has sufficient contacts with the forum state to justify jurisdiction. (*Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 266.)

Notice to be given by the clerk.